poration and was confirmed in June 1972. In June 1976 it was found that he was in breach of certain provisions in the Jurong Town Corporation's Terms and Conditions of Service for taking up part-time employment elsewhere. After an enquiry he was found guilty of the charges and his service was terminated. He then filed a suit in the High Court for a declaration that he was still in the employment of the defendant corporation and entitled to be remunerated as such. Alternatively he claimed for damages for wrongful dismissal. His claim for the declaration was dismissed but the trial Judge held that in regard to the circumstances of the case the proper sum to award would be three months' salary.

It is also to be noted that the recent amendment to the Employment Act 1955 provides for eight weeks' notice for an employee with more than five years' service.

The unfortunate aspect of this case is that while the case was pending before the trial Judge the Government decided to make all Local Council employees permanent and pensionable officers and the Government Circular No. 1 of 1975 made that decision retrospective from January 1, 1970. The appellant had contended that had it not been for the termination of service he would have been made a permanent and pensionable officer. We can only say that our sympathies are with him. The circular was issued in 1975 and at that time the appellant's employment had already been lawfully terminated.

Over a wide field of employment the common law as to minimum period of notice of termination of service has been superseded by statute, in England by the Contracts of Employment Act 1972 and in Malaysia by the Employment Ordinance 1955 (Revised 1981). Section 12 of our Employment Ordinance merely prescribes the statutory minimum. Having regard to the fact that neither side adduced any evidence on the period of notice required in the case of the appellant's contract of service and that the appellant had been serving the Council for more than 19 years, it would fair and equitable in our view to require a period of notice of six months.

We accordingly allow the appeal. Since there is only evidence that appellant was offered one month's salary in lieu of notice but no evidence that he was actually paid one month's salary we order that six months' salary be paid to him with interest at the rate of 8% per annum effective from October 19, 1972. The appellant shall also be entitled to costs here and below.

Appeal allowed.

Solicitors: *Hassan Yunos & Co.; Abdul Raman Saad & Associates.*

NORDIN BIN HAJI ABDUL WAHAB v. MOHAMED SALLEH BIN HASSAN

[S.C. (Wan Suleiman, Hashim Yeop A. Sani & Wan Hamzah S.C.JJ) February 26 & April 26, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 181 of 1985]

Tort – Negligence – Damages – Loss of earnings – Loss of future earnings – Prospects of promotion – Principle which should guide court in determining whether it should interfere with quantum of damages.

Damages – Leg – Hand – Fracture.

In this case the respondent, a Lance-Corporal in the army, was injured in a road accident. As a result of the accident he sustained the following injuries –

a) compound comminuted fracture of the upper 1/3 left tibia and fibula;

b) fracture of the lower 1/3 radius and segmental fracture of left ulna.

The learned trial judge considered that the respondent had a good chance of promotion eventually to Warrant Officer II and he computed the losses up to September 30, 1990 at $58,137.66. He also computed the reduction of future earnings at $25,588. The appellant appealed.

Held: (1) the principle which should guide the court sitting in appellate jurisdiction in determining whether it will interfere with the quantum of damages is well established. The appellate court is always slow to reverse the trial judge's decision on assessment of damages unless there are strong grounds for interference;

(2) in this case the trial judge was not realistic in considering the promotion prospects of the respondent, in that in real life an officer does not get promoted every three years in clockwork precision. Considering the whole of the evidence the respondent would have been promoted at the most to full Sergeant by the end of his military career;

(3) the pre-trial and post-trial losses of earnings would therefore be assessed at $27,022 and the reduction in future earnings at $12,800.

Cases referred to:

(1) *Mariayee* v. *Mohamed Nasir* [1985] 1 M.L.J. 427.
(2) *Ratnasingam* v. *Kow Ah Dek & Anor.* [1983] 2 M.L.J. 297.
(3) *Tan Kuan Yau* v. *Suhindrimani* [1985] 2 M.L.J. 22.
(4) *Pang Ah Chee* v. *Chong Kwee Sang* [1985] 1 M.L.J. 153.

SUPREME COURT.

Khoo Eng Chin for the appellant.

R.K. Nathan for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the judgment of the Court): This is an appeal against quantum and the dispute is confined only to items 3 and 4 of the award made by the learned Judge explained by him at pages 43 and 44 of the record of appeal as follows:

"3) The plaintiff should have been promoted to Corporal in 1981 but for the accident, 3 years after that to Sergeant, and 3 years later to Staff Sergeant, and one year 9 months on Warrant Officer II before he retires after 21 years service. Based on this finding – both counsel have computed and agreed to the following losses.

Up to 30.9.1990 for the losses in –

a)	salary, is	$23,095
b)	housing allowance	$ 8,904
c)	bonus and elaun khidmat khas	$ 1,680
d)	dividends on Tabong Angkatan Tentera	$ 1,998
e)	gratuity	$ 5,544
	(but since the gratuity money is paid now counsel agree to reduce this amount by 1/3)	$ 3,696
f)	pensions, at $220 p.m. into 9 years purchase (using the table)	$18,764.66
	Total (b) – (f) =	$58,137.66
4)	reduction of future earnings at $300/– per month x 9 years purchase (using the table)	$25,588"

The appellant's complaint is that the learned Judge was misled into embarking on an unreasonable assessment by accepting *in toto* what was said on behalf of the plaintiff about his prospects of promotion without properly considering the whole evidence. It is quite obvious that there are a number of inconsistencies in the evidence of the plaintiff on this matter which will be elaborated later in this judgment.

First the facts. The plaintiff began his career as a soldier on September 1, 1969. He was promoted to Lance Corporal on January 1, 1975. He met with an accident on November 21, 1980. As a result of the accident he sustained the following injuries –

(a) compound comminuted fracture of the upper 1/3 left tibia and fibula.

(b) fracture of the lower 1/3 radius and segmental fracture of left ulna.

The Specialist Report in the Agreed Bundle states that the plaintiff complains of pain when walking fast and has difficulty in rotation of the left forearm. He walks with a limp on the left side and is able to squat only with some difficulty. He has well healed operation scars over the left forearm (8" on the ulna side and 6" on the radial side). The fracture of the left radius and ulna shows union with the internal fixation (metal plate and screws) still in place. There is no shortening of the radius or ulna. There is limitation of supination by 10°. The fracture of the left tibia and fibula shows union with slight overlap and forward angulation. There is shortening of the left lower limb by one-third of an inch. Movements show no limitation. The scars and shortening are permanent. The limitation of supination of the left forearm can be improved by physiotheraphy and exercises.

Before the accident the plaintiff was a good volley-ball and badminton player. He was also coach and instructor for the army volley-ball team. He was undergoing the corporal's course for promotion to corporal when he was called to coach the army volley-ball team. He did not complete the corporal's course. He then met with the accident.

At the time of the trial on April 22, 1985 he was still a Lance Corporal. In fact from the date of his promotion to Lance Corporal up to the date of the accident (which covers a period of about more than five years) he was not promoted at all. The plaintiff will have served the full term of his service (that is 21 years) by September 30, 1990. By that date the plaintiff will also be 42 years old.

After the accident it is not disputed that the plaintiff will probably not be promoted because of his physical deficiencies and that he has been under "BE" which means "Base Everywhere." It

is also not disputed that he has passed the GCE examination.

It would seem clear that in his evidence the plaintiff tended to be too generous to himself. He said at page 31 that *all* his squad mates are Warrant Officer II and one or two had been promoted to Warrant Officer I. According to the evidence of his superior officer (PW2) this is not quite true. According to PW2 he had a Warrant Officer II who is 38 years old from the same squad as the plaintiff (page 37). PW2 also said that in his own camp there is another squad mate of the plaintiff who is now a full sergeant. It is also in PW2's evidence that there are plaintiff's own squad who have not been promoted (page 39).

We feel that a more reasonable assessment should have been applied by the learned Judge. There is always an element of uncertainty in matters of promotion because there are so many imponderables. The result of the written examination, the performance of the candidate in the interview, the confidential reports on the officer, the number of candidates competing for the same promotion, the number of vacancies to be filled are all factors creating uncertainties. No officer can say for certain that he will be promoted every three years however high he is in the esteem of his superior officer. See also *Mariayee* v. *Mohamed Nasir.*[1] Even if plaintiff's own superior officer (PW2) sounded very sympathetic to the plaintiff it is a well known fact that in any promotion exercise in the army or in any government department for that matter the processing is normally carried out by a number of persons one of whom may or may not include the officer's own superior.

Ratnasingam v. *Kow Ah Dek & Anor.*[2] is distinguishable. There Ratnasingam had on the whole a good academic record and moreover there was only one written examination involved. He was in the opinion of the headmaster "more than average good teacher" (page 299). The Privy Council agreed with the trial Judge and disagreed with the Federal Court and said:

"His academic record (combined with his energy and sense of duty) was such as to support the inference that he would probably have made the effort and succeeded."

In our case here there are examinations and military courses to attend. That again depends on whether the officer's name would be submitted for the course by the army commander.

The principle which should guide the court sitting in appellate jurisdiction in determining whether it will interfere with the quantum of damages is too well established. This court in *Tan Kuan Yau* v. *Suhindrimani*[3] examined the authorities and restated the principle at page 23:

"The principle that could guide this court in determining whether it should interfere with the quantum of damages is crystal clear. What is also clear is that much depends on the circumstances of each case, in particular the amount of the award. In a particular case therefore it is for the appeal court to consider whether in the light of the circumstances of that case there is an erroneous estimate of the amount of the damage in that, either there was an omission on the part of the Judge to consider some relevant materials, or he had admitted for purposes of assessment some irrelevant considerations. If the court is satisfied or convinced that the Judge has acted upon wrong principles of law then it is justified in reversing; indeed, it is its duty to reverse the finding of the trial Judge."

We are also aware of the special difficulty in an appeal against quantum. The finding that a trial Judge has erred in the direction of being too generous would not by itself constitute a matter to be appealed from and the appellate court is always slow to reverse the trial Judge's decision on assessment of damages unless there are strong grounds for interference. See *Pang Ah Chee* v. *Chong Kwee Sang.*[4]

In the present appeal we feel that the trial Judge was not realistic in that in real life an officer does not get promoted every three years in clockwork precision. The idea now is only to minimise the element of speculation. The plaintiff's own evidence shows that he was promoted from private to lance corporal only after more than five years and then for the next almost six years before the accident he was not promoted at all.

We are of the view that considering the whole evidence the plaintiff would have been promoted at the most to full sergeant by the end of his military career. For convenience of calculation we would put the plaintiff as full sergeant at the date of trial and based on the figures contained in annexures A, B, C, D, E (pages 54-57) he would suffer losses in respect of his military service up to 30/9/1990 (date of his retirement) in salary, housing allowance, bonus, dividends, gratuity and pensions as calculated in the slip submitted by Mr. Khoo Eng Chin as follows:

Salary

(a) Pre-trial loss	$3,460/-
(b) Post-trial loss	$8,920/-

Housing allowance	
(a) Pre-trial loss	$ 848/–
(b) Post trial loss	$3,250/–
Bonus	
(a) Pre-trial loss	$ 160/–
(b) Post trial loss	$ 557/–
Dividends on Tabung Angkatan Tentera	
(a) Pre-trial loss	$ 708/–
(b) Post trial loss	$ 950/–
Gratuity	
$2,016/– –$672/–	$1,344/–
Pensions	
$80/– per month for 9 years (using the Annuity Table)	$6,825/–
Total	$27,022/–

When he retires in 1990 the plaintiff will be 42 years old. In his own evidence the plaintiff said he planned on retirement to embark on "a small business" in Kelantan (page 34). In our view a more reasonable assessment of his future loss of earnings will be $150/– p.m. x 9 years purchase which will produce a round figure of $12,800/–.

We will therefore allow the appeal accordingly on both items of the award. The respondent shall pay half of the costs of the appeal. Deposit shall be refunded to the appellant.

Appeal allowed.

Solicitors: *Matthew Thomas & Co.; R.K. Nathan & Co.*

GISELA GERTRUD ABE v. TAN WEE KIAT

[S.C. (Salleh Abas L.P, Seah & Syed Agil Barakbah S.C.JJ.) December 4, 1985 & May 10, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 179 of 1985]

Family Law – Maintenance – Change of circumstances – Suspension of maintenance order – Law Reform (Marriage and Divorce) Act, 1976, ss. 83 & 96.

This was an appeal from the decision of Siti Norma Yaakob J. reported at [1986] 2 M.L.J. 58. The learned judge had directed that the maintenance order dated May 4, 1979 for the period from June 6, 1983 to January 5, 1984 be rescinded. The learned judge further directed that the amount of maintenance be reduced in the manner following –

(a) from $1,500 to $800 per month from January 6, 1984 to May 31, 1985 and

(b) from $800 to $400 from June 1, 1985 onwards until further order.

The appellant appealed to the Supreme Court.

Held: (1) there are no good reasons to interfere with the discretion of the learned judge regarding the part of the maintenance order for the period June 6, 1983 to January 5, 1985 when the respondent was unemployed after having been retrenched by his employer. However, the learned judge had no power to discharge the order for a limited period of time;

(2) the word "to vary" in sections 83 and 96 of the Law Reform (Marriage and Divorce) Act 1976 should be given a wide meaning and should not be confined only to increase or reduce the amount of the periodical payments of maintenance for the wife and/or the children of the marriage but also to include power to suspend the maintenance order or any provisions thereof temporarily and to revive the operation of the maintenance order or any provisons so suspended;

(3) in this case the learned judge had power to suspend the operation of the order of maintenance and her order should be confirmed with the substitution of "suspend" for the word "rescind" therein;

(4) the learned judge exercised her discretion correctly in varying the order of maintenance when the children attained their respective majorities but she should have adopted the same amount of variation in each case. In the circumstances of this case a reduction of $300 per month would be a fair and reasonable sum and therefore the figures of $900 for $800 per month should be substituted from January 6, 1984 to May 31, 1985 and $600 for $400 each month from June 1, 1985 onwards.

Cases referred to :

(1) *Bellenden* v. *Satherwaite* [1940] 1 All E.R. 343.

(2) *Cockburn* v. *Cockburn* [1957] 3 All E.R. 260.

(3) *Kershaw* v. *Kershaw* [1964] 3 All E.R. 635.

SUPREME COURT.

S. Sivasubramaniam for the appellant.

Kingston T.K. Tan for the respondent.

Cur. Adv. Vult.

Seah S.C.J. (delivering the Judgment of the Court): This is an appeal by the wife (hereinafter referred to as the appellant) against an Order of Siti Norma Yaakob J. directing that the maintenance order dated May 4, 1979 for the period from June 6, 1983 to January 5, 1984 be rescinded. The learned judge further directed that the amount